

Foreign Agricultural Service, USDA

§ 1599.6

§ 1599.5 When is a usual marketing requirement included?

(a) A foreign government Cooperating Sponsor shall provide to the Director, PPDED, data showing commercial and non-commercial imports of the types of agricultural commodities requested during the prior five years, by country of origin, and an estimate of imports of such commodities during the current year.

(b) FAS may require that a Program Agreement with a foreign government include a "usual marketing requirement" that establishes a specific level of imports for a specified period. The Program Agreement may also include a prohibition on the export of provided commodities, as well as of other similar commodities specified in the Program Agreement.

§ 1599.6 How are costs and advances apportioned?

(a) FAS will bear the costs of the packaging, enrichment, preservation, and fortification of agricultural commodities, and the processing, transportation, handling and other incidental charges incurred in delivering commodities to Cooperating Sponsors. FAS will deliver bulk grain shipments f.o.b. vessel, and shipments of all other commodities f.a.s. vessel or intermodal points. FAS will choose the point of delivery based on lowest cost to FAS.

(b) When the Associate Administrator approves in advance and in writing, FAS may agree to bear all or a portion of reasonable costs associated with:

(1) Transportation from U.S. ports to designated ports or points of entry abroad;

(2) Maritime survey costs;

(3) Transportation from designated ports or points of entry abroad to designated storage and distribution sites, and reasonable storage and distribution costs if the recipient country is a low income, net food-importing country that:

(i) Meets the poverty criteria established by the International Bank for Reconstruction and Development for Civil Works Preference; and

(ii) Has a national government that is committed to or is working toward, through a national action plan, the

goals of the World Declaration on Education for All and the Dakar Framework for Action of the World Education Forum; and

(4) The costs of a nongovernmental Cooperating Sponsor:

(i) In the recipient country that enhance the effectiveness of the activities including packaging, enrichment, preservation and fortification of agricultural commodities; and

(ii) For administrative or monitoring expenses specified in the program agreement.

(5) The administrative expenses of any Federal agency implementing or assisting in the implementation of the McGovern-Dole International Food for Education and Child Nutrition Program, including the administrative costs of the Food and Nutrition Service to provide technical advice on the establishment and implementation of programs, including providing field expertise in recipient countries.

(c) FAS will not pay any costs incurred by the Cooperating Sponsor prior to the date of the Program Agreement.

(d) Except as provided in paragraph (b) of this section, the Cooperating Sponsor shall ordinarily bear all costs incurred subsequent to FAS' delivery of commodities at U.S. ports or intermodal points.

(e) A Cooperating Sponsor seeking agreement by FAS to bear the storage and distribution costs identified in paragraph (b)(3) of this section or the costs identified in paragraph (b)(4) of this section shall submit to the Director, PPDED, a Program Operation Budget detailing such costs. If approved, the Program Operation Budget shall become part of the Program Agreement. The non-governmental Cooperating Sponsor may make adjustments between line items of an approved Program Operation Budget up to 10 percent of the total amount of the budget as last approved without any further approval. Adjustments beyond these limits must be specifically approved by the Director, PPDED.

(f) The Cooperating Sponsor may request advance of up to 100 percent of the amount of an approved Program Operating Budget if FAS determines

that the Cooperating Sponsor's financial management system meets the requirements of 7 CFR 3019.21. However, FAS will not approve any request for an advance received earlier than 60 days after the date of a previous advance made in connection with the same Program Agreement.

(g) Funds advanced shall be deposited in an interest bearing account until expended. Interest earned on advance of funds must be returned to FAS.

(h) The Cooperating Sponsor shall return to FAS any funds not obligated as of the 180th day after being advanced, together with interest earned on such unexpended funds. Funds and interest shall be returned within 30 days of such date.

(i) The Cooperating Sponsor shall, not later than 10 days after the end of each calendar quarter, submit a financial statement to the Director, PPDED, accounting for all funds advanced and all interest earned.

(j) FAS will pay all other costs for which it is obligated under the Program Agreement by reimbursement. However, FAS will not pay any cost incurred after the final date specified in the Program Agreement.

(k) Program income may be used to further eligible activity objectives.

§ 1599.7 What procedures apply to procuring ocean transportation?

(a) *Cargo preference.* Shipments of commodities are subject to the requirements of sections 901(b) and 901b of the Merchant Marine Act, 1936, regarding carriage on U.S.-flag vessels. A Cooperating Sponsor shall comply with the instructions of FAS regarding the quantity of commodities that must be carried on U.S. flag vessels.

(b) *Freight procurement requirements.* When FAS is financing any portion of the ocean freight, whether on U.S. flag or non-U.S. flag vessels, and the Cooperating Sponsor arranges ocean transportation:

(1) The Cooperating Sponsor shall arrange ocean transportation through competitive bidding and shall obtain approval of all invitations for bids from the Director, CCC-OD.

(2) Invitations for bids shall be posted on FAS' Web site and a commercially available news wire service.

(3) Freight invitations for bids shall include specified procedures for payment of freight, including the party responsible for the freight payments, and expressly require that:

(i) Offers include a contract canceling date no later than the last contract layday specified in the invitation for bids;

(ii) Offered rates be quoted in U.S. dollars per metric ton;

(iii) If destination bagging or transportation to a point beyond the discharge port is required, the offer separately state the total rate and the portion thereof attributable to the ocean segment of the movement;

(iv) Any non-liner U.S. flag vessel 15 years or older offer, in addition to any other offered rate, a one-way rate applicable in the event the vessel is scrapped or transferred to foreign flag registry prior to the end of the return voyage to the United States;

(v) In the case of packaged commodities, U.S. flag carriers specify whether delivery will be direct breakbulk shipment, container shipment, or breakbulk transshipment and identify whether transshipment (including container relays) will be via U.S. or foreign flag vessel;

(vi) Vessels offered subject to Maritime Administration approval will not be accepted; and

(vii) Offers be received by a specified closing time, which must be the same for both U.S. and non-U.S. flag vessels.

(4) In the case of shipments of bulk commodities and non-liner shipments of packaged commodities, the Cooperating Sponsor shall open offers in public in the United States at the time and place specified in the invitation for bids and consider only offers that are responsive to the invitation for bids without negotiation. Late offers shall not be considered or accepted.

(5) All responsive offers received for both U.S. flag and foreign flag service shall be presented to KCCO which will determine the extent to which U.S.-flag vessels will be used.

(6) The Cooperating Sponsor shall promptly furnish the Director, CCC-OD, or other official specified in the Program Agreement, copies of all offers received with the time of receipt indicated thereon. The Director, CCC-